



MARINE ENVIRONMENT PROTECTION
COMMITTEE
45th session
Agenda item 14

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MATTERS RELATED TO THE 1973 INTERVENTION PROTOCOL

Revision of the list of substances for the 1973 Intervention Protocol

Note by the Secretariat

SUMMARY

Executive summary: The Committee will recall that the 1973 Protocol to the 1969 Intervention Convention includes a list of substances which is based on lists being compiled and maintained by other IMO instruments and codes, such as MARPOL 73/78, the IBC, IGC and IMDG Codes as well as the GESAMP Hazard Profile list.

This document recalls the decision of the Forty-first session of the Committee that in accordance with Article III paragraph 1 of the Protocol to the Intervention Convention the list of substances in the Annex to the Protocol should be updated approximately every five years.

Action to be taken: Paragraph 7.

Related documents: MEPC 35/21 Annex 3, resolution MEPC.72(38), MEPC 38/20 paragraphs 15.9 and 16, MEPC 39/10, MEPC 41/16, and MEPC 41/20 paragraphs 16.2 to 16.6.

1 Parties to the Protocol relating to Intervention on the High Seas in Case of Pollution by Substances Other than Oil, 1973 (the Intervention Protocol) may take such measures on the high seas as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution or threat of pollution by substances other than oil following upon a maritime casualty or acts related to such a casualty, which may reasonably be expected to result in major harmful consequences.

2 Article I, paragraph 2, of the Intervention Protocol defines "substances other than oil": those substances listed in the Annex to the Intervention Protocol (paragraph 2a of Article I) as well as those other substances which are liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea (paragraph 2b of Article I). However, whenever an intervening Party takes action with regard to substances referred to in paragraph 2b of Article I, that Party shall have the burden of establishing that the substance, under the circumstances present at the time of the intervention, could reasonably pose a grave and imminent

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danger analogous to that posed by any of the substances listed in the Annex to the Intervention Protocol (provision contained in paragraph 3 of Article I).

3 The list of substances Annexed to the Intervention Protocol shall be established and maintained, according to in Article I paragraph 2a of the Intervention Protocol, by the body designated by the Organization. Article III of the Intervention Protocol provides the procedure for amending the list of substances. The Marine Environment Protection Committee was designated by the Assembly, through the adoption of resolution A.296(VIII) of 23 November 1973, as the body referred to in the Intervention Protocol. The list annexed to the Intervention Protocol was first adopted by the Marine Environment Committee at its Second session by resolution MEPC.1(II) on 21 November 1974 and subsequently amended by resolution MEPC.49(31) on 4 July 1991, and amended again on 10 July 1996 by resolution MEPC.72(38).

4 The substances listed in the Annex to the Intervention Protocol are divided into oils carried in bulk (Appendix 1), noxious liquid substances carried in bulk (Appendix 2), harmful substances in packaged form (Appendix 3), radioactive materials (Appendix 4) and liquified gases carried in bulk (Appendix 5). The Committee at its Thirty-eighth session through resolution MEPC.72(38) adopted amendments to Appendix 2 and Appendix 3 of the Annex to the Intervention Protocol, taking into account the criteria for the selection of substances for inclusion in the Annex to the Intervention Protocol approved by MEPC 35 (MEPC 35/21 annex 3) and the recent amendments to the IBC and IMDG codes.

5 When agreeing to the last revision to the list of substances, the Committee recognized that other amendments to the IBC and IMDG codes were being reviewed which would result in further revisions to the list being required. The OPRC Working Group meeting at MEPC 38 suggested that in future consideration should be given to fulfilling the obligations of establishing such a list under Article 1, paragraph 2 of the Intervention Protocol by a simple reference to the criteria and the instrument where substances are listed in a similar way as Article 1, paragraph 5 of the HNS Convention. As a result the Committee agreed that the OPRC Working Group should include in its work programme consideration of the desirability of replacing the list of substances for the Intervention Protocol with a reference to the source of such lists contained in other IMO instruments and codes. It also agreed to include the review of adequacy of the criteria for such a list in co-operation with the existing subsidiary bodies noting that this task should not be considered as a priority item for the Working Group's agenda (MEPC 38/20 paragraph 15.19 and section 16).

6 This issue was again discussed by the Committee at its Forty-first session. The Committee recognized the difficulties in maintaining a list of substances when such a list is based on source documents (IBC, IGC and IMDG codes as well as the GESAMP Hazard Profile list) which are being amended continually. Whilst recognizing the potential difficulties, the Committee agreed that referring to the source documents would be a pragmatic means of overcoming the problem of maintaining a separate list and it was noted that this is the approach taken within the HNS Convention. However, the Committee agreed that not all of the problems would be resolved by this approach in particular in the light of provisions of Article III on the procedure for future amendments to the list of substances. As a result the Committee agreed that the list of substances in the Annex to the Intervention Protocol should be updated approximately every five years in accordance with Article III, whilst recognizing that the criteria for identifying such substances would need to be reviewed once the various changes taking place in the GESAMP evaluation procedures, the Pollution Categorization criteria under Annex II to MARPOL 73/78, and the definition of Marine Pollutant under Annex III to MARPOL 73/78 have been completed (MEPC 41/20 paragraphs 16.4, 16.5, 16.6).

Action requested of the Committee

7 Since MEPC 41 decided to update the list of substances in the Annex to the Intervention Protocol, the Committee is invited to consider how such a work for updating could be conducted and decide as appropriate.
